

REMARKS

The Examiner has objected to Fig. 3 for lacking descriptive labels. A Replacement Sheet is provided herewith.

The Examiner has objected to Claim 7 for improper dependency. Applicants amend Claim 7 herein to correct the dependency.

The Examiner has rejected Claims 3-4 and 9-11 under 35 USC 112 as being indefinite. Applicants submit amendments to the claims to address the 112 concerns. No new matter is added by any amendments presented herein.

The Examiner has rejected Claims 1, 6-9 and 14-16 under 35 USC 102 (b) as being anticipated by the Kunniyer article. The Examiner has indicated that Claims 12 and 13 are allowed and that Claims 2, 3, 4 5, 10 and 11 would be allowable if rewritten as proposed.

The present application teaches and claims a method, apparatus and program storage device for storing a program for controlling data packet flows in a network device by manipulating data packets according to an actual manipulation rate. Amongst data packets received by a network device such as a router, data packets are identified that are marked with a pattern according to a

congestion notification scheme. A pattern rate of data packets comprising such a pattern is determined, and the actual manipulation rate is determined subject to the pattern rate.

The Kunniyer article has been cited as anticipating the pending claims. The relevant portions of the Kunniyer article teach a marking scheme for data packets whereby lost packets are interpreted as marked packets to provide loss free service by "simply substituting marks for negative acknowledgements". Kunniyer provides a marking scheme or a "congestion notification scheme" as it is referred to in the present application. Kunniyer is able to mark data packets, and to count lost data packets in accordance with their marking scheme. However, Kunniyer does not teach or suggest identifying data packets that have been marked with a pattern according to a congestion notification scheme, determining a pattern rate of data packets comprising the pattern or determining an actual manipulation rate dependent on the pattern rate.

In fact, the present invention teaches how to exploit the Kunniyer marking. Kunniyer teaches that marking is useful, but does not teach or suggest how to exploit that marking to determine an actual manipulation rate.

Anticipation under 35 USC 102 is established only when a single prior art reference discloses each and every element of a claimed invention. See: In re Schreiber, 128 F. 3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F. 3d 1475, 1478-1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F. 2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990) and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F. 2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Further, "[t]o anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. Karsten Mfg. Corp. V. Cleveland Golf Co., 242 F. 3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001); Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). Since the Kunniyer article only teaches a marking scheme, it cannot be concluded that Kunniyer anticipates the claimed invention which controls data flow by manipulating data packets according to an actual manipulation rate which is determined by exploiting a marking scheme.

Based on the foregoing amendments and remarks,
Applicants respectfully request entry of the amendment,
reconsideration of the rejections, and issuance of the
claims.

Respectfully submitted,
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